

**Peter Wolpert d/b/a City Chemical Corporation and
United Trades Local No. 35, National Organi-
zation of Industrial Trade Unions. Case 22-
CA-18532**

January 4, 1993

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT**

Upon a charge filed by the Union on June 18, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Peter Wolpert, d/b/a City Chemical Corporation, the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On November 23, 1992, the General Counsel filed a Motion for Summary Judgment. On November 30, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." By order dated August 26, 1992, the Acting Regional Director for Region 22 granted the Respondent's request for an extension of time in which to file an answer to September 4, 1992. To date, no answer has been filed by the Respondent.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation with an office and place of business in Jersey City, New Jersey, where it has been engaged in the packaging and processing of chemicals. During the 12-month period preceding issu-

ance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations, sold and shipped from its Jersey City, New Jersey facility goods valued in excess of \$50,000 directly to points located outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since about 1965, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit, and has been recognized as such by the Respondent in successive collective-bargaining agreements, the most recent of which is effective from October 1, 1991, to October 1, 1994. Since at least 1965, the Union, by virtue of Section 9(a), has been and is the exclusive collective-bargaining representative of the employees in the bargaining unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. The appropriate bargaining unit consists of:

All employees excluding office clerical employees, foremen, guards, watchmen, and supervisors as defined in the Act.

The parties reached full and complete agreement regarding the terms and conditions of employment to be incorporated in their 1991-1994 collective-bargaining contract on or about September 27, 1991. Since on or about October 1991, the Union has requested the Respondent to execute a written contract embodying the agreement reached by the parties, and since on or about December 22, 1991, the Respondent has failed and refused to do so.

On or about January, 1992, the Respondent, without the Union's consent, failed to continue in effect all the terms and conditions of the parties' agreement by failing and refusing to remit union dues for those employees who have executed dues checkoff authorizations, and failing and refusing to remit welfare and pension payments to the Union's Insurance Trust Fund and Pension Fund. Also during the week of May 11, 1992, through May 18, 1992, the Respondent failed to pay certain named employees¹ their entire wages due, and instead paid them a portion of what each was owed, and during the weeks ending May 29, June 5, June 13, 1992, and on June 15 and 16, 1992, failed to pay any wages to these employees.

¹ The employees are: Isadora Brown, Virgilio Carrasco, Ned Conyers, Willie Conyers, Mary Jane Douzart, Luis A. Jimenez, Elizabeth Rivera, Dorothy Rubino, William Schmidt, and Willie Wright.

We find that by engaging in the above conduct, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the Union within the meaning of Section 8(d) of the Act, and has violated Section 8(a)(5) and (1) of the Act, as alleged.

CONCLUSION OF LAW

By failing and refusing to execute a written contract containing agreed-upon terms, failing and refusing to continue in full force and effect the terms and conditions of its agreement with the Union by not remitting union dues for employees who have executed dues-checkoff authorizations, and not remitting welfare and pension payments to the Union's Insurance Trust Fund and Pension Fund, and failing to pay certain named employees their full wages, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be ordered to execute a written contract embodying the agreement reached with the Union on or about September 27, 1991, and to continue in full force and effect all the terms and conditions set forth in that agreement. The Respondent shall be required to remit to the Union the union dues for those employees who have executed dues-checkoff authorizations that have not been remitted since on or about January 1992, with interest to be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and to remit the welfare and pension payments to the Union's Insurance Trust Fund and Pension Fund that have not been sent since on or about the same date.² The Respondent shall also be ordered to make whole employees Isadora Brown, Virgilio Carrasco, Ned Conyers, Willie Conyers, Mary Jane Douzart, Luis A. Jimenez, Elizabeth Rivera, Dorothy Rubino, William Schmidt, and Willie Wright by paying them the portion of their wages that was not paid during the week of May 11 through 18, 1992, and the wages that were not paid them during the weeks ending May 29, June 5, and June 12, 1992, and on June 15 and 16, 1992, with interest thereon to be computed in accordance with *New Horizons for the Retarded*, supra. Finally, the Respondent shall be required to make whole unit employees for any expenses they may have incurred as a result of its failure and refusal to continue in effect all the terms and conditions of its

agreement with the Union, with interest. *New Horizons for Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Peter Wolpert, d/b/a City Chemical Corporation, Jersey City, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to execute a written contract embodying the agreement reached on or about September 27, 1991, with United Trades Local No. 35, National Organization of Industrial Trade Unions, which is the designated exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit, covering the unit employees' terms and conditions of employment. The appropriate bargaining unit consists of:

All employees excluding office clerical employees, foremen, guards, watchmen, and supervisors as defined in the Act.

(b) Failing and refusing to continue in effect since on or about January 1992, all the terms and conditions of its agreement with the Union by failing and refusing to remit union dues for those employees who have executed dues-checkoff authorizations, and failing and refusing to remit welfare and pension payments to the Union's Insurance Trust Fund and Pension Fund.

(c) Failing and refusing to pay all or part of the wages owed to the following employees:

Isadora Brown	Luis A. Jimenez
Virgilio Carrasco	Elizabeth Rivera
Ned Conyers	Dorothy Rubino
Willie Conyers	William Schmidt
Mary Jane Douzart	Willie Wright

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute the contract containing the unit employees' terms and conditions of employment embodied in the agreement reached with the Union on or about September 27, 1992.

(b) Continue in effect all the terms and conditions contained in the agreement reached with the Union on or about September 27, 1991, and remit to the Union the union dues for employees who have executed dues-checkoff authorizations that have not been remitted since on or about January 1992, with interest as described in the remedy section of this decision, and remit welfare and pension payments to the Union's Insurance Trust Fund and Pension Fund that have not been forwarded since about the same date.

² Any additional amounts applicable to these payments shall be computed in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

(c) Pay the employees listed below, with interest as set forth in the remedy section of this decision, the portion of the wages that the Respondent failed to pay them during the week of May 11 through May 18, 1992, and the wages the Respondent failed to pay them during the weeks ending May 29, June 5, and June 13, 1992, and on June 15 and 16, 1992.

Isadora Brown	Luis A. Jimenez
Virgilio Carrasco	Elizabeth Rivera
Ned Conyers	Dorothy Rubino
Willie Conyers	William Schmidt
Mary Jane Douzart	Willie Wright

(d) Make whole unit employees for any expenses they may have incurred as a result of the Respondent's failure and refusal to continue in effect all the terms and conditions of its agreement with the Union, with interest as described in the remedy section of this decision.

(e) Preserve and on request make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(f) Post at its facility in Jersey City, New Jersey, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to execute a written contract embodying the agreement reached on or about September 27, 1991, with United Trades Local No. 35, National Organization of Industrial Trade Unions, which is the designated exclusive collective-bargaining representative of our employees in an appropriate bargaining unit, containing the unit employees' terms and conditions of employment. The appropriate bargaining unit consists of:

All employees excluding office clerical employees, foremen, guards, watchmen, and supervisors as defined in the Act.

WE WILL NOT fail and refuse to continue in effect all the terms and conditions of our agreement with the Union by refusing to remit union dues to the Union from employees who have executed dues-checkoff authorizations.

We will not fail and refuse to pay employees all or part of the wages owed to them.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL execute a written contract with the Union containing the terms and conditions of employment embodied in the agreement reached with the Union on or about September 27, 1991, WE WILL continue in effect all the terms and conditions of that agreement, and WE WILL remit to the Union, with interest, the dues for those employees who have executed dues-checkoff authorizations that have not been remitted since on or about January, 1992, and remit the welfare and pension fund payments to the Union's Insurance Trust Fund and Pension Fund that have not been remitted since about the same date.

WE WILL make whole the employees listed below by paying them the portion of wages not paid to them during the week May 11 through 18, 1992, and the wages not paid them during the weeks ending May 29, June 5, and June 13, 1992, and on June 15 and 16, 1992, with interest. WE WILL make whole unit employees for any expenses they may have incurred as a result of our failure and refusal to continue in effect all the terms and conditions of our agreement with the Union, with interest.

PETER WOLPERT, D/B/A CITY CHEMICAL
CORPORATION